

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Alex Nugent **EXAMINER:** Peter Coughlan
SERIAL NO.: 10/730,708 **GROUP:** 2129
FILED: 12/08/2003 **ATTY DKT NO.:** 1000-1214
TITLE: **ADAPTIVE NEURAL NETWORK UTILIZING
NANOTECHNOLOGY-BASED COMPONENTS**

**DECLARATION PURSUANT TO 37 C.F.R. 51.130 TO DISQUALIFY
COMMONLY OWNED PUBLISHED APPLICATION AS PRIOR ART**

Dear Sir:

I, Alex Nugent, declare as follows:

1. I am the inventor of the subject matter claimed in U.S. Patent Application Serial No. 10/730,708, which was filed on December 8, 2003.
2. I am also the inventor of the subject matter claimed in U.S. Patent Application Serial No. 10/095,273, which was filed on March 12, 2002 and published as U.S. Patent Application Serial No. 20030177450 on September 18, 2003. U.S. Patent Application Serial No. 10/095,273 Issued as U.S. Patent No. 6,889,216.
3. U.S. Patent Application Serial No. 10/730,708 and U.S. Patent Application Serial No. 10/095,273 are commonly owned and assigned to the same entity, KnowmTech, LLC as recorded with the U.S. Patent & Trademark Office.

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4. I am aware that claims 6, 7, and 11-21 in the above-captioned U.S. patent application serial No. 10/730,708 stand rejected in the Office Action dated November 28, 2006 as being unpatentable under 35 U.S.C. 103 over the combination of McHardy, Nagahara, Kaler, and the reference known as "Nugent" (U.S. Patent Publication No. US20030177450, September 18, 2003).

5. The present application and the published application of US20030177450 and resulting issued Patent No. 6,889,216 are currently owned by the same party, KnowmTech, LLC by way of proper assignments to KnowmTech, LLC which have been previously recorded with the U.S. Patent & Trademark Office.

6. The inventor named in the present application is a prior inventor under 35 U.S.C. 104 with respect to both the present application and Nugent reference of U.S. Patent Publication No. US20030177450. That is, all inventive activity with respect to both the Nugent reference of U.S. Patent Publication No. US20030177450 and the present application took place within the United States of America.

7. The Nugent reference of U.S. Patent Publication No. US20030177450 therefore does not constitute prior art under 35 U.S.C. 102(b) because U.S. Patent Publication No. US20030177450 was published on September 18, 2003. Under 35 U.S.C. 102(b), a person shall be entitled to a patent unless the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one

year prior to the date of the application for patent in the United States. That is, the present application of U.S. Patent Application Serial No. 10/730,708, was filed on December 8, 2003 and the Nugent reference of U.S. Patent Publication No. US20030177450 was published on September 18, 2003, which was not more than one year prior to the date of the application for patent in the United States for purposes of 35 U.S.C. 102(b).

8. The Applicant is aware that when any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 on a U.S. patent or U.S. patent application publication which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent or published application are not identical but are not patentably distinct, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent or patent application publication as prior art. The patent or patent application publication can be disqualified as prior art by submission of a terminal disclaimer in accordance with § 1.321(c); and an oath or declaration stating that the application or patent under reexamination and patent or published application are currently owned by the same party, and that the inventor named in the application or patent under reexamination is the prior inventor under 35 U.S.C. 104.

9. A terminal disclaimer in accordance with § 1.321(c) is submitted herewith.

10. The Applicant therefore submits this declaration under 37 CFR 1.130 overcomes the prior art rejection to claims 6, 7, and 11-21 in the Office Action dated November 28, 2006 and that the Nugent reference should be removed as a prior art reference and therefore cannot be combined with McHardy, Nagahara and Kaler as a basis for rejecting claims 6, 7, and 11-21 under 35 U.S.C. 103(a).

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 10 of the United States Code, and that such willful false statements may jeopardize the validity of the application, and patent issuing thereon, or any patent to which this declaration is directed.



Alex Nugent

Dated: February 15, 2007